FILE COPY

JAN 26 1948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

No. 432

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

TILLIE ZAZOVE,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Respondent's Brief.

EDWARD H. S. MARTIN,
JOHN B. KING,
10 South LaSalle Street,
Chicago 3, Illinois,
Attorneys for Respondent.

INDEX.

	PAGE
Opinion below	1
Statement	1
Summary of argument	2
Argument	3

CITATIONS.

CASES.

Aschenbrenner v. U. S. F. & G. Co., 292 U. S. 80	22
Campbell v. Galeno C. Co., 281 U. S. 599	8
Carter v. Cutting, 8 Cranch. (12 U. S.) 251	3
Cleveland v. U. S., 329 U. S. 14	9
Ebert v. Poston, 266 U. S. 548	7
Ex p. Vallandingham, 1 Wall. (68 U. S.) 243	21
FRC v. Gen. E. Co., 281 U. S. 464	21
Gemsco v. Walling, 324 U. S. 244	8
Girouard v. U. S., 328 U. S. 61	9
Jones v. Lib. G. Co., 68 S. Ct. 229	12
Lynch v. U. S., 292 U. S. 571	15, 22
Marbury v. Madison, 1 Cranch. (5 U. S.) 137	21
Miller v. U. S., 294 U. S. 435	8
M. L. I. Co. v. Hurni P. Co., 263 U. S. 167	22
Newhall v. Sanger, 92 U. S. 761	4
Old C. R. Co. v. Commissioner, 284 U. S. 552	17
Order of Ry. Conductors v. Swan, 329 U. S. 520	11

Panama R. Co. v. Ryan, 293 U. S. 388 8
Pine Hill Coal Co. v. U. S., 259 U. S. 191 21
Reiche v. Smythe, 80 U. S. 162 17
Russell M. C. Co. v. U. S., 261 U. S. 514 7
Schmidt v. Eq. L. A. Soc., 376 Ill. 183 20
Stroehmann v. M. L. I. Co., 300 U. S. 435 22
U. S. v. Am. N. B. & T. Co., 316 U. S. 674 20
U. S. v. George, 228 U. S. 14 6
U. S. v. Goldenberg, 168 U. S. 95 4
U. S. v. Grimaud, 220 U. S. 506 5
U. S. v. Kirby, 74 U. S. 482 17
U. S. v. Mo. P. R. R., 278 U. S. 269 7
U. S. v. Standard Brewery, 251 U. S. 210 6
U. S. v. 200 Barrels of Whiskey, 95 U. S. 571 4
Wilner v. U. S., 292 U. S. 571 15
Zazove v. U. S., 156 F. 2d 24 9
Zazove v. U. S., 162 F. 2d 443 1,12

STATUTES AND REGULATIONS.

Code of Fed. Reg. (R. 5), § 10.3450, Tit. 38 13
Code of Fed. Reg., § 10.3068 (2), Tit. 38 13
Illinois Constitution, § 2, Art. VI, Smith-H. Ill. Annot. Stat., p.178 21
Illinois Practice Act, Ill. R. S. 1939, Chap. 110, par. 216, Smith-H. Ill. Annot. Stat., pp. 419-20 20
National Service Life Insurance Act, Tit. 38 § 802(h) USCA 694 ..... 13, 14
U. S. Constitution, Cl. 2, Sec. 2, Art. III, USCA pp. 476-7 20

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

No. 432

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

TILLIE ZAZOVE,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

RESPONDENT'S BRIEF.

OPINION BELOW.

Zazove v. U. S., 162 F. 2d 443.

STATEMENT.

Petitioner's statement (Bf. 4) that there was an offer of payment is inaccurate. Nothing was offered. Likewise the statement (Bf. 5-6) that the Veterans' Administration is required to use the American Experience Table of Mortality in calculating insurance payments by Section 602(e) of the Act, is argumentative and whether the Act so requires is the very question to be decided in this case.

SUMMARY OF THE ARGUMENT.

Delegation of powers and Congressional silence do not sustain Regulation 3450 3-12

Installments to older class of beneficiaries proper 12-14

Even Congress could not reduce the amount contracted to be paid to the older class 14-15

Rule of ejusdem generis calls for rejection of petitioner's construction 15-16

Respondent's rights not affected by amendment after they had vested 17-18

Wisdom of Act is to be determined by Congress, not by the courts 18

Petitioner should not be permitted to distort Congressional language by absurd construction 18-19

Construction similar to that of former statute should be given 19

Size of appropriation required does not change the statute 19

Petitioner should not be allowed to manufacture evidence by writing a letter to itself and answering the same, as the Supreme Court is confined to its appellate jurisdiction in this case 20-21

So-called "astronomical amount" an exaggeration 21-22

Pine Hill Coal Co. v. U. S., distinguished 21-22

Government insurance contracts subject to the same rule of construing uncertain language against the insurer, as private insurance contracts 22

Insurance limits statutory only and may be varied by Congress 23-24

ARGUMENT.

Petitioner's position on the rate question is based largely on administrative construction, supposed to have received legislative approval by silence. The cases we will cite show the present tendency of the courts is to place less and less weight upon such construction, or supposed construction, and to determine such questions for themselves. Many of these cases are opinions written by present members of the Supreme Court. It is interesting to note the increasing emphasis placed upon disapproval of the doctrine until the recent announcement that such theory of approval by silence is fallacious because it would violate the constitutional requirements for legislation that it be embodied in a bill introduced in Congress, passed by it and approved by the President, and would substitute therefor an enactment by an administrative agency, and mere failure of Congress to act thereafter; also because Congress may have failed to act in such a case merely because of pressure of more important business, because of political considerations, or a desire to leave the matter to the courts, or because of various other reasons stated in the opinion below.

The following cases show the trend in chronological order from the earliest times until the most recent:

> "We cannot admit that construction to be a sound one which seeks by remote inference to withdraw a case from the general provisions of a statute which is clearly within its words and perfectly consistent with its intent."
>
> *Carter* v. *Cutting*, 8 Cranch (12 U. S.) 251, 252.

"This section expressly excludes from pre-emption and sale all lands claimed under any foreign grant or title. It is said that this means 'lawfully' claimed; but there is no authority to import a word into a statute in order to change its meaning. Congress did not prejudge any claim to be unlawful, but submitted them all for adjudication."

Newhall v. *Sanger*, 92 U. S. 761, 765.

"The regulations of the Department cannot have the effect of amending the law. They may aid in carrying the law as it exists into execution, but they cannot change its positive provisions."

U. S. v. 200 *barrels of whiskey*, 95 U. S. 571, 576.

"The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."

U. S. v. *Goldenberg*, 168 U. S. 95, 18 S. Ct. 3, 4.

"From the beginning of the government, various acts have been passed conferring upon executive officers power to make rules and regulations,—not for the government of their departments, but for administering the laws which did govern. None of these statutes could confer legislative power. But when Congress had legislated and enacted its will, it could give to those who were to act under such general provisions 'power to fill up the details,' by the establishment of administrative rules and regulations, * * *"

(then referring to *U. S.* v. *Eaton*, 144 U. S. 677). "Congress required the dealer to keep books, rendering return of materials and products, but imposed no penalty for failing so to do. The Commissioner went much further, and required the dealer to keep books showing oleomargarine received, from whom received and to whom the same was sold. It was sought to punish the defendant for failing to keep the books required by the regulations. Manifestly, this was putting the regulations above the statute. The court showed that when Congress enacted that a certain sort of book should be kept, the Commissioner could go no further and require additional books; or, if he did make such regulation, there was no provision in the statute by which a failure to comply therewith could be punished. It said that, 'if Congress intended to make it an offense for wholesale dealers to omit to keep books and render returns required by regulations of the Commissioner, it would have done so distinctly',—implying that if it had done so distinctly, the violation of the regulations would have been an offense."

U. S. v. *Grimaud*, 220 U. S. 506, 517, 519.

"Especial stress, however, is put upon section 2246. By that section a registrar or receiver is authorized and it is made his 'duty to administer any oath required by the law or the instructions of the General Land Office in connection with the entry of purchase of any tract of land.' * * *

"Acting under the authority presumed to be given by section 2246 and the other sections, a regulation was promulgated, which prescribed forms of taking preemption and final homestead proof by questions and answers, and provided that 'the claimant will be required to testify, as a witness, in his own behalf, in the same manner.' * * * It will be observed, therefore, that the claimant was required to testify as other witnesses. In other words, three witnesses were required; sec. 2291 requires two only, and, as we have said, points out what proof, in addition, the claimant

himself shall give. It is manifest that the regulation adds a requirement which that section does not, and which is not justified by sec. 2246. To so construe the latter section is to make it confer unbounded legislative powers. What, indeed, is its limitation? If the Secretary of the Interior may add by regulation one condition, may he not add another? If he may require a witness or witnesses in addition to what sec. 2291 requires, why not other additions; and the disposition of public lands thus be taken from the legislative branch of the government and given to the discretion of the Land Department? It is not an adequate answer to say that the regulation must be reasonable. The power to make it is expressed in general terms. If given at all, it is as broad as its subject, and may vary with the occupant of the office. This is to make conditions of title, not to regulate those constituted by the statute."

U. S. v. *George*, 228 U. S. 14, 20-1.

"Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. • • •

"As to the insistence that the Internal Revenue Department had determined that a beverage containing one-half of 1 per cent. of alcohol should be regarded as intoxicating within the intendment of the act before us little need be said. Nothing in the act remits the determination of that question to the decision of the revenue officers of the government. While entitled to respect, as such decisions are, they cannot enlarge the meaning of a statute enacted by Congress. Administrative rulings cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."

U. S. v. *Standard Brewery*, 251 U. S. 210, 217, 219-20, 40 S. Ct. 139, 140, 141.

"It must be apparent, we think, that the words of the provision, 'any existing or future contract,' read with literal exactness, include all contracts, whether private or governmental. But it is pointed out that the power to 'requisition' cannot apply to a governmental contract; and this may be conceded, since the government cannot requisition what it already has. * * * Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have no place, as this court has many times held, except in the domain of ambiguity. * * * They may not be used to create but only to remove doubt.

* * * The question we are called upon to answer is whether, because the words 'any * * * contract' must be given a narrower meaning when qualified by the predicate 'requisition', their meaning must be limited in like manner when qualified by one of the other three predicates. * * * But here the meaning of the words considered severally is not in doubt, and the rule is invoked not to remove an obscurity, but to import one. * * * The meaning of the several words, standing apart, being perfectly plain, what should be done is to apply them distributively, *diverso intuitu*, giving to each its natural value and appropriate scope when read in connection with the object (any contract) which they are severally meant to control."

Russell M. Co. v. *U. S.*, 261 U. S. 514, 519, 520, 521, 43 S. Ct. 428, 429, 430.

"The judicial function to be exercised in construing a statute is limited to ascertaining the intention of the Legislature therein expressed. A *casus omissus* does not justify judicial legislation."

Ebert v. *Poston*, 266 U. S. 548, 45 S. Ct. 188, 190.

"Construction may not be substituted for legislation."

U. S. v. *Mo. P. R. R.*, 278 U. S. 269, 278, 49 S. Ct. 133, 136.

"The limits of the power to establish regulations are well settled. * * * They may not extend a statute or modify its provisions."

Campbell v. *Galeno C. Co.*, 281 U. S. 599, 610.

"Such regulations become, indeed, binding rules of conduct, but they are valid only as subordinate rules and when found to be within the framework of the policy which the legislature has sufficiently defined."

Panama R. Co. v. *Ryan*, 293 U. S. 388, 428-9.

"It is invalid because not within the authority conferred by the statute upon the Director (or his successor, the Administrator) to make regulations to carry out the purposes of the Act. It is not, in the sense of the statute, a regulation at all, but legislation. * * * This is beyond administrative power. The only authority conferred, or which could be conferred by the statute, is to make regulations to carry out the purposes of the act—not to amend it."

Miller v. *U. S.*, 294 U. S. 435, 439, 440, 55 S. Ct. 440, 442.

"The argument from the legislative history undertakes, in effect, to contradict the terms of Section 8 (f) by negative inference drawn from inconclusive events occurring in the course of consideration of the various and widely differing bills which finally, by compromise and adjustment between the two Houses of Congress, emerged from the conference as the Act. The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction. This is such a case."

Gemsco v. *Walling*, 324 U. S. 244; 65 S. Ct. 605, 614-5.

The Circuit Court of Appeals' opinion in the instant case on first appeal:

> "Departmental constructions are guides, not mandates. We must always assume the responsibility for the construction of the Act, giving to it the construction which we think Congress intended, considering the language it used and the purpose it had in mind to accomplish."
>
> *Zazove* v. *U. S.*, 156 F. 2d 24, 27.

> "It is at best treacherous to find in Congressional silence alone the adoption of a controlling rule of law. We do not think under the circumstances of this legislative history that we can properly place on the shoulders of Congress the burden of the Court's own error."
>
> *Girouard* v. *U. S.*, 328 U. S. 61, 69; 66 S. Ct. 826, 830.

See concurring opinion of Mr. Justice Rutledge in *Cleveland* v. *U. S.*, 329 U. S. 14,22-4, 67 S. Ct. 13, 17, 18:

> "Notwithstanding recent tendency, the idea cannot always be accepted that Congress, by remaining silent and taking no affirmative action in repudiation, gives approval to judicial misconstruction of its enactments. See *Girouard* v. *United States*, 328 U. S.....[5], 66 S. Ct. 826.
>
> "There are vast differences between legislating by doing nothing and legislating by positive enactment, both in the processes by which the will of Congress is derived and stated and in the clarity and cer-

---

[5] • • • Legislative intent derived from nonaction or 'silence' lacks all the supporting evidences of legislation enacted pursuant to prescribed procedures, including reduction of bills to writing, committee reports, debates, and reduction to final written form, as well as voting records and executive approval. Necessarily also the intent must be derived by a form of negative inference, a process lending itself to much guesswork.

tainty of the expression of its will. And there are many reasons, other than to indicate approval of what the courts have done, why Congress may fail to take affirmative action to repudiate their misconstruction of its duly adopted laws. Among them may be the sheer pressure of other and more important business. See *Moore* v. *Cleveland R. Co.*, 6 Cir., 108 F. 2d 656, 660. At times political considerations may work to forbid taking corrective action. And in such cases, as well as others, there may be a strong and proper tendency to trust to the courts to correct their own errors, see *Girouard* v. *United States*, *supra*, 66 S. Ct. at page 830, as they ought to do when experience has confirmed or demonstrated the errors' existence.

"The danger of imputing to Congress, as a result of its failure to take positive or affirmative action through normal legislative processes, ideas entertained by the Court concerning Congress' will, is illustrated most dramatically perhaps by the vacillating and contradictory courses pursued in the long line of decisions imputing to 'the silence of Congress' varied effects in commerce clause cases. * * * That danger may be and often is equally present in others. More often than not the only safe assumption to make from Congress' inaction is simply that Congress does not intend to act at all. *Cf. United States* v. *American Trucking Ass'n*, 310 U. S. 534, 550, 60 S. Ct. 1059, 1067, 84 L. Ed. 1345. At best the contrary view can only be an inference, altogether lacking in the normal evidences of legislative intent and often subject to varying views of that intent. * * * In short, although recognizing that by silence Congress at times may be taken to acquiesce and thus approve, we should be very sure that, under all the circumstances of a given situation, it has done so before we so rule and thus at once relieve ourselves from and shift to it the burden of correcting what we have done wrongly. he matter is particular, not general, notwithstanding earlier exceptional treatment and more recent tendency. Just as dubious legislative history is at times much over-ridden, so also is silence or inaction often mistaken for legislation.

> "I doubt very much that the silence of Congress in respect to these cases, notwithstanding their multiplication and the length of time during which the silence has endured, can be taken to be the equivalent of bills approving them introduced in both houses, referred to and considered by committee, discussed in debates, enacted by majorities in both places, and approved by the executive. I doubt, in other words, that, in view of all the relevant circumstances including the unanticipated consequences of the legislation, such majorities could have been mustered in approval of the Caminetti decision at any time since it was rendered. Nor is the contrary conclusion demonstrated by Congress' refusal to take corrective action."

In *Order of Ry. Conductors* v. *Swan*, 329 U. S. 520, 529, 67 S. Ct. 405, 410, in spite of the failure to pass either of two bills seeking to correct administrative construction, it was said:

> "It does not appear whether the bills died because they were thought to be unnecessary or undesirable. • • • Under such circumstances, the failure of Congress to amend the statute is without meaning for purposes of statutory interpretation."

That might be well said of the failure of Congress to act in the matter involved in the instant suit. Congress was asked to give an option to veterans under thirty years of age and to use similar language in giving an option to those thirty years of age or older, and acquiesced in the administrative request for such options, probably without deciding whether the option was very desirable or not from the standpoint of the older beneficiaries. Congress may have thought that while such older beneficiaries would not be apt to take advantage of the option, if they desired to have as much of the insurance as possible paid as quickly as possible, yet there might be a few beneficiaries who would be more interested in getting a greater amount of interest for slower payment of principal.

Petitioner cites several cases in supposed support of its contention that the silence of Congress compels the conclusion that it approved the administrative construction, but its cases refer to approval and adoption of long and uniform administrative construction of prior statutes, when the language therein contained is enacted in another statute of later adoption. The Act involved in the instant case is an original enactment, and not a re-enactment of any former Act, unless it be considered as a re-enactment of the administrative regulation as to converted insurance under the former World War Veterans Act, which fixed the amount of the monthly benefits under the 120 installment option at the higher rate we are contending for, save for a slight adjustment because of difference in interest rate. As said by the court below: "Silence must be so compelling as to lead to no other reasonable construction before we are justified in holding that Congress approved an invalid regulation by mere silence." *Zazove* v. *U. S.*, 162 F. 2d 443.

Petitioner argues in his brief that weight should be given to the construction given by the administrative agency in whose province the Act falls, and cites numerous cases in supposed support of that principle. These cases, however, had to do with administrative construction uniformly followed over a long period of years and not to new construction as in the case at bar which had continued but a few years and hardly long enough for a court contest with respect thereto to have been concluded.

Jones v. *Lib. G. Co.*, ... U. S. ....., 68 S. Ct. 229, 234.

Under the World War Veterans' Act. 1924, as amended, converted insurance was payable in 240 monthly installments, including interest at 3½% per annum, unless the insured designated one of the options which provided for payment in a smaller number of installments. Under this option he was permitted to provide that the insur-

ance should be payable in 120 monthly installments. In that event, for each $1,000 face value of insurance, it was determined how much interest would be earned on the monthly balance of the $1,000 if the principal and interest were paid off in 120 equal monthly installments, and that total amount was determined to be $9.83 per month, or $1,179.60 for the 120 months. Therefore, $1,000 of this was principal and $179.60 was interest.

Tit. 38, Code of Fed. Reg., § 10. 3068 (2).

The same computation ought to be applicable under the National Service Life Insurance Act, except the rate of interest thereunder is 3% instead of 3½%. Therefore, the amount of interest should be 6/7 of the $178.60 only, or $153.94. Adding this to the principal of $1,000 would make a total of $1,153.94. Dividing this into 120 equal monthly installments would make each installment $9.616, and multiplying this by 5, because $5,000 is the amount of insurance involved in the instant suit, would make the monthly installments due plaintiff $48.08, instead of $29.50, which the present regulation gives to a beneficiary aged 54.

§ 10.3450, Tit. 38, Code of Fed. Reg. (R. 5).

To arrive at this reduced figure, the Veterans' Administration engages in mental gymnastics wholly unwarranted by the Act of Congress and wholly devoid of common sense. Congress said (Tit. 38, § 802 (h) (2), USCA, 694) that if the beneficiary is 30 or more years of age at maturity, the insurance shall be payable in equal monthly installments for 120 months certain, with such payments continuing during the remainder of the lifetime of such beneficiary. That certainly meant that the beneficiary should get the same amount (save for the ½% reduction in the interest rate) as a beneficiary whose insurance was paid in 120 months under the old law, and not as the

Veterans' Administration figures it, that you should determine the life expectancy of the beneficiary and then make each monthly installment sufficient to pay the beneficiary the principal and interest only if the actual lifetime of that beneficiary coincides exactly with his or her life expectancy. If the latter were the proper construction of the statute, it would be utterly nonsensical to provide that the face of the policy and interest should be paid in equal monthly installments for 120 months certain, with such payments continuing, etc., thereby evidencing an intent that the beneficiaries in the older class should receive larger installments than those in the younger class. If the beneficiary had a life expectancy of 20 years and actually lived only 10, only one-half the insurance would be paid to anybody. If Congress had intended such a result it would have so indicated in appropriate language. It would have said that the insurance should be payable in equally monthly installments during the life expectancy of the beneficiary, provided that if the beneficiary died before receiving 120 monthly installments, the balance of the 120 installments should be payable to the substituted beneficiary, and if the designated beneficiary lived beyond the said life expectancy the installments should continue to be paid during the actual lifetime of the beneficiary. As Congress did not so provide, it was beyond the power of the Veterans' Administration to alter the Act of Congress by administrative regulation.

As said in the opinion below, sub-section 2 of the Act of Congress (38 USCA, Sec. 802 (h) (2)) seems to be plain and unambiguous and means what it says in stating that the face value of the insurance, plus interest, is to be paid in 120 equal monthly installments. Nothing is said in the statute about equalizing the sum over the life expectancy of the beneficiary. The regulation does

that, and thereby sets up a formula different from that prescribed by Congress. While the Veterans' Administration may by regulation carry out the provisions prescribed by Congress yet it may not alter those provisions. Even the Congress itself could not do that with respect to the contract obligation of the Government to the beneficiary.

In *Lynch* v. *U. S., and Wilner* v. *U. S.*, decided in the combined opinion 292 U. S. 571, 578, 580, the author of this brief obtained a decision of the Supreme Court to that effect: (p. 578) "But no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress; and none could be given by any regulation promulgated by the Administrator * * *. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment * * *. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals," and (p. 580) "But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen.'"

In the face of this it is sought to justify an administrative regulation lessening the amount of benefits provided in the Act of Congress which was incorporated in the contract between the United States and the deceased soldier. That Act and contract provided that insurance

benefits should be paid to beneficiaries thirty years of age or older, sufficient to pay the face of the insurance and interest within ten years and that the monthly benefits should continue at the same rate throughout the lifetime of the first beneficiary, but the administrative official undertook by regulation to say that such beneficiaries should not receive that amount of money, but should receive a much smaller amount, based upon their life expectancies. In this connection, counsel state that the amount of monthly installments was not specified in the Act. If not specified in dollars and cents, because familiar language in other acts was used, it was specified that the face of the policy and interest should be paid out in 120 monthly installments. In order to twist the Act around so as to bring the regulation in accord with it, counsel seek to find a hidden meaning in the provision in Section 602(a) of the National Service Life Insurance Act, where, after specifying that the premium rates shall be based upon the American Experience Table of Mortality, it is also provided that all cash, loan, paid up and extended values and all other calculations in connection with such insurance, shall be based upon said Table and interest at 3%. Keeping in mind the well known rule of *ejusdem generis*, "all other calculations in connection with such insurance" would refer to matters of the same class as those preceding the words in question, and would not refer to benefits, as the preceding words referred only to premiums and the various matters having to do with converted insurance only. It is a distortion of the congressional intent to construe those words, as counsel seek to do, to require smaller monthly payments to the older beneficiaries than to the younger.

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an

absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language, which would avoid results of this character. The reason of the law, in such cases, should prevail over its letter."

U. S. v. *Kirby*, 74 U. S. (7 Wall.) 482, 19 L. Ed. 278, 280.

"If it be true that it is the duty of the court to ascertain the meaning of the Legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so, in order to carry out the legislative intention.

* * * "And it is fair to presume, in case a special meaning was attached to certain words in a prior tariff Act, that Congress intended they should have the same signification when used in a subsequent Act in relation to the same subject-matter."

Reiche v. *Smythe*, 80 U. S. (13 Wall.) 162, 20 L. Ed. 566.

We do not believe petitioner should be allowed to twist the plain meaning of Congress into something entirely different. An appropriate answer to the labored and confusing misconstruction argued and re-argued time and time again in petitioner's brief, on which Regulation 3450 is based, is to be found in the following:

"The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

Old C. R. Co. v. *Commissioner*, 284 U. S. 552, 560, 52 S. Ct. 211, 213.

The fallacy in the argument attributing congressional approval of the unauthorized administrative construction

is apparent by mere reference to the calendar. Congress originally enacted the National Service Life Insurance Act in 1940. The insured in the instant case died May 12, 1943, and the policy then matured and respondent's rights became vested. It was after that, September 30, 1944, and again August 1, 1946, that other Congresses by their enactments gave to certain beneficiaries additional options, without, however, attempting to abrogate rights already vested under the original Act. Those options cannot change those vested rights, nor change or qualify the intent of the Congress which granted them, and all that is said in petitioner's brief in regard to those amendments is beside the point in the construction of the original Act.

Petitioner's contention that the rate of payment that we are contending for in the case of beneficiaries thirty years of age or over is unwise, is a contention that should be addressed to Congress, and is not a matter with which the courts are concerned. The same argument in only slightly lesser degree would apply to payments to veterans of World War I who remained totally and permanently disabled beyond the specified 240 months. The argument that there is no apparent reason for larger monthly payments to older beneficiaries is baseless. As is well known, most of the soldiers' beneficiaries are women relatives, and Congress may have thought that older beneficiaries would be much more apt to need larger monthly payments than the younger ones. For instance, the older beneficiaries would be much less apt to secure adequate support from their own efforts. Their age would be a great handicap in fitting themselves for many occupations, such as stenographic work, teaching, operatic roles, movie actresses, doctors, dentists, nurses, etc., to say nothing of

being less likely to better their position through marriage.

Petitioner's construction assumes, necessarily, that Congress intended that the younger class of beneficiaries, who, in the nature of things, would need less each month, should receive more,—in most cases almost double,—than the older class of beneficiaries, who would need more, because of their greater age, with increasing ills and incapacity and decreasing earning power and opportunity for improving their financial situation.

Moreover, the Congress, in enacting the provision in question, used familiar language in providing for payments for a fixed number of years or months, to continue thereafter at the same rate for life, for the original war risk insurance was payable in monthly installments sufficient to exhaust the face of the insurance and interest in a definite time, 240 months, but in the case of totally and permanently disabled veterans that insurance continued at the same rate after the 240 months, during the totally permanent disability of the veteran. It is extremely unlikely that any considerable number of members of the Congress which enacted the National Service Life Insurance Act could be found who believed that in passing it they were giving the older beneficiaries less than the younger ones.

The alleged difficulty of the Administrator in setting aside reserve amounts to meet liabilities is another question of the wisdom of the statute which falls within the province of Congress, and not of the courts. Very likely Congress thought that if the reserve set up proved to be insufficient, the matter could be remedied by deficiency appropriations or by increase in the regular appropriations.

Although it is a matter beyond the province of the court, petitioner seeks to prevail by "scare" tactics and use of such words as "astronomical amount", and resorts to the improper practice of writing a letter to itself and answering its own letter and publishing that answer in the appendix to its petition. Although the dire results predicted will not follow, as we will show presently, this quoting of correspondence is improper for consideration.

The author of this brief raised the same point in this court in *U. S.* v. *Am. N. B. & T. Co.*, No. 1038, October Term, 1941, 316 U. S. 674, in which the government's petition for *certiorari* was denied. What we there said is applicable here. No such claim was made in the District Court and that court did not pass upon any such question. If such letters are to be considered by the Supreme Court on *certiorari*, that court must then disregard the Constitutional distinctions (Cl. 2, Sec. 2, Article III, USCA, pp. 476-7) between its original and appellate jurisdiction and assume original jurisdiction in this case to decide a question not presented to the District Court and without opportunity to respondent to contest that question on the facts. A very similar question arose in Illinois under a provision of its new Practice Act (Ill. R. S. 1939, Chap. 110, par. 216, Chap. 110, Sec. 216 Smith-H. Ill. Annot. Stat., pp. 419-20) giving litigants the right to make amendments and offer evidence in courts of review which had not been made or offered in the trial court and the Illinois Supreme Court in *Schmidt* v. *Eq. L. A. Soc.*, 376 Ill. 183, 197-8, decided that such a practice would involve the exercise of original jurisdiction by the court of review and would be in violation of the Constitution. Sec. 2, Article VI, Illinois Constitution, provides in part: "The supreme court * * * shall have original jurisdiction in cases relating to the revenue, in mandamus and *habeas corpus*, and appellate

jurisdiction in all other cases." *Smith-H. Ill. Annot. Stat.*, p. 178. There is no such provision in the Rules of Civil Procedure and so we must resort to the state decision. In line with the same principle it has been decided that even Congress cannot give the Supreme Court original jurisdiction beyond that given in the Constitution.

Ex p. Vallandingham, 1 Wall. (68 U. S.) 243, 252, 17 L. Ed. 589.

Marbury v. *Madison*, 1 Cranch (5 U. S.) 137, 174-6.

F. R. C. v. *Gen. E. Co.*, 281 U. S. 464, 469, 74 L. Ed. 969.

Ignoring the fact that the insurance in question is for a five year term only, much of which has already run, at the expiration of which time it must be converted into other standard forms which do not contain the continuing liability for life of the beneficiary so objected to, petitioner in its argument and the letter in question claims that if the decision now under review would be affirmed government expenditures for insurance benefits to the older class of beneficiaries would increase by many billions, or, to use petitioner's words, to an "astronomical amount". It seems to make a difference whether our billions should be given away abroad or be given away in any amount whatever where they would benefit our own deserving citizens and by expenditures in this country increase prosperity. Perhaps this was one consideration that Congress had in mind among the many mentioned in the opinion below in providing generously for the older class of beneficiaries.

Petitioner cites (Bf. 44-5) *Pine Hill Coal Co.* v. *U. S.*, 259 U. S. 191, 196, in supposed support of the theory

that our construction should be rejected because of the expense to the government. However, the case so cited was concerned, not with the amount involved in an admitted liability, but with whether any liability at all was imposed. From the general language of that case, applied as it was to an entirely different situation, it is sought to establish a rule which would require, in construing what petitioner's brief (pp. 23, 24) asserts to be uncertain language in the Act, the choice of the construction which would impose the smallest expense upon the United States. This, however, ignores the decision in *Lynch* v. *U. S.*, 292 U. S. 571, 579, 54 S. Ct. 840, 843, which we have hereinbefore quoted from, that government insurance contracts are the same as such contracts between private parties. As is thoroughly established in insurance law, any doubt or uncertainty in insurance contracts is to be resolved against the insurer as the latter chose the language without consultation with the insured, who had to take the contract as prepared by the insurer or not at all.

Aschenbrenner v. *U. S. F. & G. Co.*, 292 U. S. 80, 84-6, 54 S. Ct. 590, 592-3.

Strochmann v. *M. L. I. Co.*, 300 U. S. 435, 439-40, 57 S. Ct. 607, 609.

M. L. I. Co. v. *Hurni P. Co.*, 263 U. S. 167, 174-6. 44 S. Ct. 90, 91.

However, it is apparent that those who prepared the "astronomical" figures for the Administrator of Veterans' Affairs have over-stated the figure that could have been shown if an attempt had been made to prove those figures in the District Court. It is common knowledge that not long ago the Veterans' Administration was claiming a large surplus had been accumulated through its having over-estimated the amount of insurance premiums re-

quired and was seeking some way to return this surplus to its source.

If we compare continuing installments under World War I insurance with the similar ones under National Service Life Insurance we will find no insuperable increase. For instance, insured veterans of World War I were to be paid in insurance benefits so that they would receive the face of their policies with interest in 240 monthly installments, or in 20 years, and continuing thereafter as long as they should remain totally and permanently disabled. Therefore, if a World War I soldier became totally and permanently disabled at 18, a very frequent age, and so remained until 58, he would receive his $10,000 twice over, or $20,000 and interest, instead of $10,000 and interest. On the other hand, if a World War II beneficiary was 30 when her insurance matured and lived to be 58 she would receive $28,000, or only $8,000 and interest on her $10,000 in addition to what the totally and permanently disabled World War I veteran would receive. There does not seem to be occasion for any panic in this.

It seems to us utterly fallacious to construe the Acts of Congress as contended for by us as authorizing the payment of more than $10,000 of insurance to any one person. The same provision has been upheld in original war risk insurance, whereby totally and permanently disabled veterans might collect the face of the policy and interest several times over if they remained totally and permanently disabled long enough without amounting to more than $10,000 of insurance, regardless of what may eventually be paid thein. As well might it be argued that because interest is paid on the face of the policy, that constitutes more than $10,000 of insurance. What difference does it make anyhow? The $10,000 limitation

is statutory only and might lawfully be increased by statutory amendment or exception.

We believe the judgment under review should be affirmed.

Respectfully submitted,

EDWARD H. S. MARTIN,
JOHN B. KING,
Attorneys for Respondent.

P. 7

SUPREME COURT OF THE UNITED STATES

No. 432.—October Term, 1947.

The United States of America, Petitioner, v. Tillie Zazove.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 14, 1948.]

Mr. Chief Justice Vinson delivered the opinion of the Court.

We are called upon in this case to determine whether Regulation 3450 of the Veterans' Administration [1] is in accord with a proper construction of § 602 (h) (2) of the National Service Life Insurance Act of 1940.[2]

Respondent, Tillie Zazove, was designated beneficiary in a $5,000 contract of National Service Life Insurance. The insured died in 1943, and the named beneficiary filed her claim for the insurance in the Veterans' Administration. Upon denial of the claim, suit was instituted in the District Court for the Northern District of Illinois.[3] The District Court ruled, on its view of the facts, that Mrs. Zazove did not stand *in loco parentis* to the soldier and hence was not one of the persons who could be made a beneficiary as provided by the statute.[4] On appeal, the Circuit Court of Appeals for the Seventh Circuit ruled to the contrary and remanded for further proceedings. 156 F. 2d 24.

---

[1] 6 Fed. Reg. 1162, 1166, 38 C. F. R. 1941 Supp. § 10.3450.

[2] Part I, Title VI of the Second Revenue Act of 1940, Act of Oct. 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. §§ 801, 802 (h) (2).

[3] Pursuant to § 617 of the Act, 38 U. S. C. § 817.

[4] § 602 (g), 38 U. S. C. § 802 (g).

The issue remaining for determination by the District Court upon remand was the validity of Regulation 3450. It sustained the regulation as properly issued pursuant to the National Service Life Insurance Act. On a second appeal, the Circuit Court of Appeals, one judge dissenting, reversed. We granted certiorari to review the important question of statutory construction involved.

The basic statutory provision involved is § 602 (h) of the National Service Life Insurance Act of 1940, which provides that insurance issued under the Act "shall be payable in the following manner:

> "(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.
>
> "(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."

The Administrator, acting under the general rule-making power given him by the Act,[5] promulgated Regulation 3450 (set forth in the margin)[6] shortly after the enactment

---

[5] Sec. 608, 38 U. S. C. § 808: "The Administrator, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this chapter, shall have power to make such rules and regulations, not inconsistent with the provisions of this chapter, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. . . ."

[6] "*Payment to first beneficiary.*—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the

of the statute, to put § 602 (h) into operation. The regulation provides, for beneficiaries covered by clause (1), that "payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance." The amount of the monthly installment is so

---

policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:

"(a) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.

"(b) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with the following schedule based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum:

"Age of beneficiary at date of death of insured	*Amount of each monthly installment*
30	$3.97
40	4.50
50	5.39
54	5.90
60	6.81
68	8.19
70	8.51
80	9.55

"

calculated that the sum of the 240 installments equals the face value of the insurance plus 3% interest per annum.

It is the provision made by the regulation for first beneficiaries covered by clause (2) that is in issue, since the first beneficiary in this case, Mrs. Zazove, was more than thirty years old when the policy matured. For such beneficiaries, who are to receive payments for life with 120 payments certain, the regulation provides that the "amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with a schedule based upon the American Experience Table of Mortality and interest at the rate of 3 percentum per annum. . . ." Accordingly, the size of the monthly installment varies not merely with the face value of the insurance policy but also with the age of the first beneficiary, the latter factor being used as the basis of an actuarial computation whereby the face value of the policy plus interest is equalized over the life expectancy of the beneficiary. Under this interpretation of § 602 (h) (2), the respondent, who was 54 years of age at the death of the insured, is entitled to monthly installments of $29.50, at the rate of $5.90 for each $1,000 of insurance in which she had a beneficial interest. These installments are to be paid for 120 months certain,[1] and to continue during her remaining lifetime if she lives beyond that 10-year period.

In reversing the District Court, the Circuit Court of Appeals held this method of calculation set forth by Regu-

[1] If the first beneficiary fails to survive the 10-year period, after having received at least one installment, "thereafter monthly installments in the same amount shall be paid to the person or persons entitled as beneficiary until all of the installments certain shall have been paid." Regulation 3451, 6 Fed. Reg. 1162, 1166, 38 C. F. R. Cum. Supp. § 10.3451.

lation 3450 to be inconsistent with the provisions of § 602 (h) (2). It construed the latter provisions, in accord with the respondent's contention, as plainly requiring that the total of the equal monthly installments payable over a period of 120 months certain should equal the face value of the insurance, plus interest. Under this construction, Mrs. Zazove is entitled to receive $48.08, instead of $29.50, as her monthly installment, so that the total of the 120 payments certain will amount to $5,000 (plus interest), instead of $3,450 (plus interest) as determined by the Veterans' Administration, with the monthly installments due her if she survives the period of guaranteed payments continuing at the same rate. Taking into account Mrs. Zazove's life expectancy as estimated by the American Experience Table of Mortality, the actual cash value of this $5,000 insurance policy at the time of the insured's death would amount to $8,145 under respondent's construction, instead of $5,000 as determined by the regulation.[*]

In arriving at its decision, the majority of the Circuit Court of Appeals reasoned that the terms of § 602 (h) (2) are clear and unambiguous; that nothing is said in the statute about equalizing the sum over the life expectancy of the beneficiary; and that Congress unmistakably prescribed payment of the face value plus interest in equal monthly installments over a period of 120 months certain. The major difficulty with this reasoning lies in the inadequate consideration that it gives to the full extent of the payment provided by § 602 (h) (2). In effect, the Circuit Court of Appeals majority stopped short, in its reading of the terms for payment of the insurance in that subsection, at the end of the phrase "in equal monthly installments for one hundred and twenty months certain." By stopping short at that phrase, the court failed to consider

[*] See table, *infra* note 18.

the alternative possibility that Congress intended the immediately following phrase, "with such payments continuing during the remaining lifetime of such beneficiary," to provide an additional and equally essential component of the statutory equivalent for the face value of the insurance. Assuming that this alternative construction of the section is in fact what Congress intended, the only proper interpretative regulation would be one that computed the value of the monthly installments payable to any given first beneficiary in such a manner that the value of the payments to be made, giving due weight to the beneficiary's life expectancy at the death of the insured, would be equivalent to the face value of the policy, plus 3% interest. Regulation 3450 is based on that assumption. It was only because the Circuit Court of Appeals failed to regard the continuing payability of monthly installments, after the payment of the 120 installments certain, as possibly constituting a significant component of the insurance for which the serviceman had contracted, rather than a sheer gratuity conferred by Congress, that the court could view the subsection as plainly and without ambiguity requiring the face value of the insurance to be paid by the end of the 120 months certain.

Moreover, the very presence of the term "certain" in the phrase "equal monthly installments for one hundred and twenty months certain" suggests a view contrary to that reached by the court below. It will be noted that when Congress had in mind, as it clearly did in the case of § 602 (h) (1), that a fixed number of installments provided for should equal the face value of the insurance, there was no occasion for the use of "certain" in describing the installments to be made and, indeed, the term is not found in § 602 (h) (1). While the inclusion of the term in describing the fixed number of installments to be paid under § 602 (h) (2) might conceivably be a mere superfluity, its presence at least suggests the far greater prob-

ability that it was used in the specialized, technical sense in which it is generally employed in the insurance field, namely, to indicate a guaranty that a designated number of monthly payments shall be forthcoming, where a policy provides an option for equal monthly installments continuing throughout the lifetime of a payee, with the individual installment varying in amount depending on the age of the beneficiary when the policy matures.[9]

Hence, in our view, a reading of § 602 (h) (2) in its entirety suffices to demonstrate that the language there used by Congress is far from being so clear and so free from ambiguity as to preclude the construction adopted by the Veterans' Administration in Regulation 3450. To this extent, we believe the reasoning of the Circuit Court of Appeals was in error. But that alone would not necessarily invalidate its holding since, as the Government appears to concede, the terms of § 602 (h) (2) are not unambiguously in accord with the regulation. Indeed, if the ambiguity inherent in § 602 (h) (2) were found in the terms of an ordinary commercial insurance policy, there might well be substantial ground for construing it in favor of the insured.[10]

There is, of course, a marked distinction between the criteria for judicial construction of an ordinary commercial insurance contract, and construction of the provisions of an act of Congress setting up a system of national life insurance for servicemen to be administered by a governmental agency. The statutory provisions, where ambiguous, are to be construed liberally to effectuate the beneficial purposes that Congress had in mind. In this respect, judicial construction of the statute may appear

[9] See examples, in the text *infra*, of standard usage of this term in commercial insurance policies.

[10] See *Aschenbrenner* v. *United States Fidelity & Guaranty Co.*, 292 U. S. 80, 84 *et seq.* (1934); *Manufacturers' Accident Indemnity Co.* v. *Dorgan*, 58 F. 945, 956 (1893).

similar to construction of a commercial policy, where ambiguous provisions are generally construed in favor of the insured. In the latter case, construction favorable to the insured rests on the theory that "The phraseology of contracts of insurance is that chosen by the insurer and the contract in fixed form is tendered to the prospective policy holder who is often without technical training, and who rarely accepts it with a lawyer at his elbow. So if its language is reasonably open to two constructions, that more favorable to the insured will be adopted . . . and unless it is obvious that the words are intended to be used in their technical connotation they will be given the meaning that common speech imports. . . ."[11] But the statute is an expression of legislative intent rather than the embodiment of an agreement between Congress and the insured person. Only the intent of Congress, which in this case is the insurer, need be ascertained to fix the meaning of the statutory terms; the layman understanding of the policy holder does not have the relevance here that it has in the construction of a commercial contract.[12]

On the other hand, we think it clear that an administrative regulation purporting to construe an ambiguous subsection of the National Life Insurance Act of 1940 is not automatically to be deemed valid merely because not plainly interdicted by the terms of the particular provision construed. The Administrator's general rule-making power, which was exercised in issuing Regulation 3450, is limited by the statute to "such rules and regulations, not inconsistent with the provisions of this chapter, as are

---

[11] *Aschenbrenner* v. *United States Fidelity & Guaranty Co.*, *supra* note 10, at 84–85.

[12] This is not, of course, to deny that the statute and regulations adopted pursuant to it give rise to an obligation that has the force of a binding contract with the serviceman insured. See *Lynch* v. *United States*, 292 U. S. 571, 579 (1934).

necessary or appropriate to carry out its purposes . . . ." [13]
Moreover, a 1946 amendment to § 608, designed to eliminate the finality of the decisions of the Administrator on insurance matters,[14] amended the last sentence of § 608 to add the words set out in italics:

> "Except in the event of suit as provided in section 617 hereof, *or other appropriate court proceedings*, all decisions rendered by the Administrator under the provisions of this Act, or regulations *properly* issued pursuant thereto, shall be final and conclusive on all questions of law or fact, and no other official of the United States, *except a judge or judges of United States courts*, shall have jurisdiction to review any such decisions."

The extension of procedures available to secure judicial review, the interpolation of the word "properly," and the addition, presumably out of an abundance of caution, of the tautological phrase "except a judge or judges of United States courts" are indicative of congressional concern that the regulations of the Veterans' Administration be subject to more than casual judicial scrutiny when they are based upon a controverted construction of the statute.

Accordingly, § 602 (h) (2) must be read in the full context of related sections of the statute and other indicia of legislative intent before we can adequately determine whether the regulation is "not inconsistent" with the provisions of the Act and whether it is "necessary or appropriate to carry out its purposes." We turn therefore from narrow, semantic considerations to a broader context in which the intent of Congress can be more readily comprehended.

---

[13] § 608, 38 U. S. C. § 808, quoted in part *supra*, note 6.

[14] S. Rep. No. 1705, 79th Cong., 2d Sess. 9; H. R. Rep. No. 2002, 79th Cong., 2d Sess. 10; § 12 of the 1946 amendment, 60 Stat. 781, 788, amending § 608.

The proper meaning of § 602 (h) (2) becomes apparent when the respective assumptions and consequences of each of the two alternative interpretations before us are tested against the legislative history and the statute viewed in its entirety. The construction adopted by the Circuit Court of Appeals would result in conferring a far greater return to beneficiaries in the group covered by § 602 (h) (2), *i. e.*, over thirty at the time of the insured's death, than the return to which first beneficiaries covered by § 602 (h) (1), *i. e.*, under thirty at the insured's death, are entitled. It is unquestioned that the latter group, under the original statutory provisions,[15] were entitled only to 240 monthly installments (*i. e.*, over a 20-year period) which in the aggregate equal the face value plus interest, with no further installments payable thereafter, whether or not the payee survived that limited period. But, under the ruling of the Circuit Court of Appeals, payments in many if not most of the cases involving the former group of beneficiaries would exceed the face value of the policy since any first beneficiary who survived the 10-year period of § 602 (h) (2) would automatically secure more than that amount. In fact, the actual value of a policy, at maturity, to a 30-year old beneficiary, under this ruling, would be almost two and a half times its face amount,[16] whereas the 29-year old beneficiary, paid in accordance with § 602 (h) (1) (whose interpretation is not open to question), could never receive more than the face amount, plus interest. And the aggregate of guaranteed and continuing payments made at so high a rate

[15] The statute was amended in 1946 to make all future beneficiaries, regardless of age, eligible for the life annuity with 120 guaranteed payments previously limited to those over thirty. § 9 of the 1946 amendment, 60 Stat. 781, 785, adding § t (d) to § 602 of the 1940 Act.

[16] See table, *infra* note 18.

under § 602 (h) (2) would necessarily greatly exceed the total face value of the policies issued under the statute.[17]

This sharp disparity between the two different groups of beneficiaries does not result under the regulation, since

---

[17] *Ibid.*

As mentioned in note 15 *supra*, the life annuity with 120 guaranteed payments was made available in 1946 to all beneficiaries regardless of age. Acceptance of respondent's interpretation would require us to view Congress as having offered, in the 1946 amendment, four optional settlements (see note 36 *infra*), three of which would be limited in value at maturity to the face amount of the insurance, while the fourth option would offer a value far in excess of the face amount and would be available to all beneficiaries without regard to their age at the insured's death.

By the calculations of the American Experience Table, a person has to be 68 years old before his life expectancy is less than 10 years. Accordingly, in all cases where the first beneficiary is under 68 years of age at the time the insured dies, the actual value of the policy, thus computed, would exceed its face amount. The Administrator estimates that, on the approximately 2.1 billion dollars of death claims already incurred and now being settled under the provision for life income with installments guaranteed for 120 months, the additional liability that would result if settlement were required to be made pursuant to the Circuit Court's holding would amount to approximately 1.8 billion dollars. Government's brief, p. 67. Potential liability on the billions of dollars of insurance now in force and yet to mature would similarly be vastly increased under this view.

The precise size of the latter liability is of course problematical. In a letter to the Solicitor General, dated October 24, 1947, the Veterans' Administration estimated the amount of insurance in force and not yet matured at 35 billion dollars. Assuming that all of that insurance would be held to mature at death and that the typical beneficiary would be a woman aged 30 at the death of her husband, and that all policies would be settled under the life income option with installments guaranteed for 120 months, the Administrator estimated that potential liability under respondent's view of the statute might be about 97 billion dollars, instead of 35 billion dollars (the potential liability under Regulation 3450)—an increased

the age of the first beneficiary is used by the regulation as the basis of an actuarial calculation pursuant to a formula whereby total payments under § 602 (h) (2) approximate the face value of the policies, plus interest. The extent of the difference in result is indicated by the table, set forth in the margin,[18] of comparative present values of the monthly installments under the regulation and under the view of the Circuit Court of Appeals, taking into account the beneficiary's life expectancy as shown by the American Experience Table of Mortality.

The Circuit Court thought it probable that Congress originally intended the higher rate of benefit payments to be restricted to the beneficiaries covered by § 602 (h) (2) because that group of persons over 30 at the time of the serviceman's death would include parents, who would be at least middle-aged, and "young widows with small children whose ten years of monthly payments would end at

---

future liability of 62 billion dollars. And if 10% of all lapsed policies were reinstated, the potential additional liability (on the basis of the above assumptions) would be about 19.7 billion dollars.

While these assumptions may be overly favorable to the Government's contentions and may not be fully borne out by the course of future events, it is obvious—even allowing for a wide margin of error—that the added potential liability under the holding of the Circuit Court of Appeals might well amount to billions of dollars.

[18]

Beneficiary's age	*Present value under Regulation 3450*	*Present value under C. C. A. 7 view*
10	$1,000	$2,786
20	1,000	2,633
30	1,000	2,421
40	1,000	2,136
50	1,000	1,783
54	1,000	1,629
60	1,000	1,411
70	1,000	1,129

See Appendix D of the Government's brief for the mathematical formulae used in constructing this table.

the most needed time."[19] This would hardly serve to explain, however, why Congress would intentionally discriminate in so substantial a manner against a similarly deserving but slightly younger widow in the under-thirty category by failing to extend comparable benefits to the latter group.

The disparity in benefits available under the respondent's view, as contrasted with those available under the regulation, is reflected in a correspondingly large increase, under the former view, in the total liability for beneficial payments.[20] This greatly enhanced liability could be met, theoretically, in either of two ways: by special congressional appropriations, or by greatly increased premium rates substantially above those which are now set by the Veterans' Administration on the assumption that the regulation is proper.

The Circuit Court of Appeals was of the opinion that Congress intended the Government to bear the burden of this extraordinary liability. By express provisions in the 1940 Act, Congress specified that the United States would bear the administrative costs of the insurance system,[21] excess mortality and disability cost resulting from the extra hazards of war,[22] and the cost of reimbursing the reserve fund for waiving recovery of benefit payments erroneously made where it would be inequitable to require repayment.[23] Congress obviously contemplated that the

[19] Transcript of Record, p. 10.

[20] Under the respondent's view, this extraordinary putative liability must be considered to have been tremendously increased by the extension of the § 602 (h) (2) method of payment to all beneficiaries by the 1946 amendment which removed the limiting age factor. See note 15 *supra*.

[21] § 606, 38 U. S. C. § 806.

[22] § 607 (a), 38 U. S. C. § 807 (a).

[23] § 609, 38 U. S. C. § 809. Subsequent amendments to the 1940 Act added other specified costs to be borne by the United States. See, *e. g.*, 38 U. S. C. Supp. V, § 802 *et seq.*

reserve fund to meet the liabilities of National Service Life Insurance policies was to be self-supporting, sustained by the premiums paid and by the yield of premiums invested, in all respects aside from those exceptional situations where the statute specifically designated that the Government would bear the financial burden. Yet Congress nowhere specified that the United States would bear the huge cost of the enhanced liability that it would necessarily have anticipated had it impressed upon § 602 (h) (2) the meaning that respondent finds there; and that striking omission is persuasive, in the absence of cogent considerations to the contrary, that no generosity of this magnitude was contemplated.[24]

Nor can it be assumed that Congress envisaged the setting of premium rates high enough to meet an added liability of such proportions. Senator Harrison, who was in charge of the original bill, informed the Senate that "Premium rates based on the average age—25 years—will be 67 cents per thousand per months." [25] Such a rate, though adequate to cover payments under Regulation 3450, would be completely inadequate under the respondent's construction.

Moreover, whatever ambiguity exists in the language of § 602 (h) (2) is dispelled by a consideration of the practice in effect under United States Government Life Insurance, established for World War I veterans, and the long-established practice of commercial insurance companies, viewed as part of the background of experience

---

[24] *Cf.* the reasoning of the Court, speaking through Mr. Justice Holmes, in *Pine Hill Coal Co.* v. *United States*, 259 U. S. 191, 196 (1922): "A liability in any case is not to be imposed upon a government without clear words. . . . and where, as here, the liability would mount to great sums, only the plainest language could warrant a court in taking it to be imposed. . . ."

[25] 86 Cong. Rec. 12920 (1940).

which the draftsmen of § 602 (h) (2) may be assumed to have had in mind.

The World War Veterans Act, 1924,[26] provided for payment of insurance benefits in 240 equal monthly installments, but authorized the Veterans' Administration (formerly the Veterans' Bureau) to provide in the contract of insurance "for optional settlements, to be selected by the insured, whereby such insurance may be made payable either in one sum or in installments for thirty-six months or more: . . ." One of the options, set up by Regulation 3068 under this statutory authorization, provided that monthly installments in amounts designated in an appended table—the amounts being graduated, just as in Regulation 3450, with the "age of beneficiary at time of death of the insured"—"will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before 240 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provision of the policy." [27]

It seems apparent to us that the congressional draftsmen, in framing § 602 (h) (2), were undoubtedly striving to incorporate into the 1940 Act a provision modeled on the life-annuity-with-240-payments-certain option set up by Regulation 3068 under the World War Veterans Act of 1924, deviating materially only in the number of payments guaranteed. True, § 602 (h) (2) does not itself define expressly the method of computation to be used by the Administrator in determining the size of the monthly installments in any given case. But, taking into account the factors previously set forth and considering them against the background of experience under

[26] Title III, 43 Stat. 607, 624, as amended, 38 U. S. C. § 512.
[27] 38 C. F. R. 10.3068.

the 1924 Act, the only reasonable conclusion is that Congress intended the calculation to be an actuarial one, based on the age of the beneficiary. To subscribe to the opposite conclusion, we must believe that Congress intended, by its wording of § 602 (h) (2), to bestow upon beneficiaries of World War II servicemen total payments completely disproportionate to those available to beneficiaries of World War I servicemen. To believe that Congress, by the enactment of a somewhat ambiguous provision, intended this disproportionate result along with the other disparities that have been shown to be required by the respondent's view, puts too great a strain upon the imagination.

Moreover, the congressional draftsmen of § 602 (h) (2), with the example before them of the 1924 Act and the similar practice of standard commercial insurance companies, undoubtedly considered that even the very wording of that subsection, without more, necessarily implied that the Administrator was to follow the existing practice in calculating the size of the monthly installments. As previously noted, the term "certain" appearing in the phrase "equal monthly installments for one hundred and twenty months certain" is a technical word that connotes, because of the context in which it is commonly used in standard commercial policies, an actuarial calculation of the monthly installments payable.

For example, one of the standard life insurance policies used in 1940 provided for a life income option to be "Made payable in equal annual, semi-annual, quarterly or monthly instalments for ten or twenty years certain, with payments continuing during the remaining lifetime of the person upon whose life the income depends . . . . The first instalment will be due upon the date on which the option becomes operative. The amount of such instalments shall be determined in accordance with the table of instalments on the following page, which instalments include interest at the rate of 3% per annum,

and shall be based on the sex and the age at birthday nearest the due date of the first instalment, of the person upon whose life the income depends. . . ." [28] Another example, closer to the concise form of § 602 (h) (2), though using the term "fixed" rather than "certain," is an option which provides for "the payment of equal monthly instalments in accordance with the table below [a table whose payments are graduated in amount with respect to the "Age of Payee Nearest Birthday at Date of First Instalment"], to the insured or the beneficiary, as the case may be, for a fixed period of ten years and for so long thereafter as the payee shall survive, the first instalment being payable immediately." [29]

Congress may also have assumed that its intent was made manifest by the juxtaposition of § 602 (h) (2) with other provisions having similar connotations. Section 602 (1), for example, authorizes the Administrator "to set aside out of [the National Service Life Insurance Fund] such reserve amounts *as may be required under accepted actuarial principles to meet all liabilities* under such insurance. . . ." (Italics added.) And § 602 (e)

---

[28] *The Handy Guide to Standard and Special Contracts* (1940) 294.

[29] *Id.* at 613.

A third illustration provides in the following terms for an election between a plan similar to that provided by § 602 (h) (2) as construed by Regulation 3450, and the refund life income plan provided by the 1944 amendment to the statute (see note 33 *infra*): "The company will pay equal monthly instalments during the payee's remaining life, with 120 or 240 instalments certain or with instalments certain until the proceeds are refunded, as may be designated in the election of the option, the amount of each instalment to be determined from the table entitled 'Option 4—Life Income With Instalments Certain' in accordance with the sex of the payee and the age of the payee at the payee's birthday nearest to the date when the proceeds of this policy shall become payable, the first of said instalments to be payable immediately. . . ." *Handy Guide, supra* note 28, at 983. See also *id.* at 1284–85.

provides that the premium rates, all "cash, loan, paid up, and extended values, *and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality* and interest at the rate of 3 per centum per annum. . . ." (Italics added.)

In any event, the subsequent legislative history of the statute clearly indicates congressional approval of the construction put upon § 602 (h) (2) by Regulation 3450. A proposed bill was suggested in a letter written by the Administrator of the Veterans' Administration to Congress in June, 1944, to amend §§ 602 (h) (1) and 602 (h) (2) of the 1940 Act by authorizing "the election of a refund life income in lieu of the mode of payments now provided." [30] In explaining the necessity of the amendment, the Administrator pointed out that if "a widow having a minor child, who is entitled to payments as provided in section 602 (h) (2), dies after having received one or more installments of insurance, payments under the contract will cease after payment of 120 installments has been completed *even though the total amount of the installments paid or payable is less than the face value of the policy* and even though the child is too young to be capable of self-support at the time payments expire. The proposed amendments will authorize the payment of the full face value of the insurance *in every instance* and will also insure an income throughout the lifetime of the first beneficiary under the policy." [31]

In other words, the amendment was proposed partly to extend a life income option to beneficiaries covered by § 602 (h) (1), who theretofore had been eligible only for the 240-payment plan, and partly to provide a solution for the inequitable situation presented in certain

[30] S. Rep. No. 1105, 78th Cong., 2d Sess. 2, quoting the Administrator's letter.

[31] *Id.* (italics added).

cases covered by the provisions of § 602 (h) (2), when the 120 installments certain amounted to less than the face value of the policy and the first beneficiary died before having received an amount equal to that face value. The inequitable situation thus considered to be present under § 602 (h) (2) and sought to be ameliorated by the proposed amendment could not have existed, of course, if the Circuit Court of Appeals were correct in the construction it has put upon § 602 (h) (2).

The Senate Committee on Finance, in recommending passage of the bill, adopted the Administrator's letter as explanatory of the various provisions of the bill [32] and indicated thereby its approval of the interpretation embodied in Regulation 3450, since otherwise a major purpose claimed to be effected by the amendment would have been completely illusory. Moreover, a table included in the Administrator's letter, comparing the amount of each monthly installment and the sum of the guaranteed installments under the new refund life income plan and under § 602 (h) (2), clearly apprised Congress of the construction put upon the latter section by the regulation. Hence, in enacting the amendment [33] Congress indicated

[32] *Id.* at 1.

[33] Section 6 of the 1944 Act, 58 Stat. 762, 763, amended § 602 (h) (2) by providing that the Administrator "may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act." Section 5 of the 1944 Act added a similar amendment to § 602 (h) (1).

its approval of the interpretation upon which the Regulation is based.[34]

Similar recognition that in many instances "the aggregate amount of insurance actually payable" under the original mode of settlement provided by § 602 (h) (2) "amounted to much less than the face of the policy" was given by the House Committee on World War Veterans' Legislation, in recommending a 1946 amendment to permit policies on which payments had been made prior to the 1944 act to elect the refund life income plan.[35] The 1946 bill also included a provision setting up optional modes of settlement for insurance maturing on or after August 1, 1946, and the third option was couched in language identical in every significant respect to that used in the original § 602 (h) (2).[36] Accordingly, when Con-

[34] Cf. *Alexander* v. *Mayor, &c.*, 5 Cranch 1, 7–8 (1809).

[35] H. R. Rep. No. 2002, 79th Cong., 2d Sess. 5. The measure was approved by Congress, and § 9 of the Act amends § 602 (h) (1) and (2) as indicated. 60 Stat. 781, 785.

[36] The measure provided for the addition of a new § 602 (t), reading as follows: "Insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 shall be payable in accordance with the following optional modes of settlement:

"(1) In one sum.

"(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

"(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

"(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary: *Provided*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months. . . ."

gress enacted the 1946 bill, it in effect incorporated the old provision of § 602 (h) (2), which was the basis for Regulation 3450, and in our view thereby accepted the construction embodied in that regulation, which had been so clearly brought to its attention on this and prior occasions.

Further evidence, were any needed, that Congress accepted as its own this interpretation of the language used in § 602 (h) (2) is supplied by the significant distinction maintained in this reenactment between the mode of payment originally provided by § 602 (h) (2) and the refund life income plan, viewed in the light of the House Committee Report on the bill. It is hardly conceivable—and if conceivable, hardly explicable—that Congress meant one thing by the language it used in § 602 (h) (2) when enacting the original measure in 1940, and another, quite different thing, when it reenacted that language in 1946.

In the light of the foregoing considerations, the validity of Regulation 3450 is sustained and the decision of the Circuit Court of Appeals is

Reversed.